

**NATURAL RESOURCES COMMISSION
Information Bulletin #36 (Third Amendment)
Effective January 1, 2005**

Subject: Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33).

1. History

The development of conservancy districts is an increasingly active option for addressing a variety of land use issues at the local level. Freeholders within contiguous geographic areas may use a conservancy district to achieve a dependable drinking water supply, to provide for sewage collection and treatment, to improve flood control, to reduce soil erosion, or to achieve any of numerous other water-resource community goals, either singly or in combination. IC 14-33-1-1.

The determination whether to approve the establishment of a conservancy district and the primary responsibility for the oversight of an existing conservancy district rest with a circuit court where the district is located. IC 14-33-2-26. Management of the district itself is under the control of a board of directors, selected initially by the county commissioners and subsequently by the freeholders of the district. IC 14-33-5-11.

Important roles are also served by the natural resources commission at six crucial stages in the formation, management, and dissolution of conservancy districts. At two of the stages, hearings for public input are required. At the other four, hearings may be requested. These stages also provide the primary forums for the receipt and evaluation of scientific and technical data upon which the court adjudicates and the board manages. In the receipt and evaluation of technical data, the commission brings together reports and analyses of the department of natural resources, acting primarily through the division of water, and other state and local agencies. Most common among these are the department of environmental management, state department of health, and utility regulatory commission.

In 1996, a comprehensive commission policy was established for procedural functions relating to the formation and development of conservancy districts. [Information Bulletin #12, 19 IR 2801, superseded]. Four developments were identified by the commission in support of the policy:

First, the absence of a policy led to public uncertainty and discomfort, particularly among persons who oppose the formation

of a conservancy district or who oppose the development of a project within an existing conservancy district. Concerns had been expressed that the conservancy district process should be re-evaluated to assure all citizens within the boundaries of a proposed or existing district would have meaningful access to the hearing processes.

Second, the complexity of the economic and environmental issues supported the need for a consistent policy. Not the least of these issues were the regulatory functions of the state agencies and their coordination with local governmental entities bearing upon the functions of conservancy districts.

Third, the natural resources commission and the department of natural resources had experienced a statutory evolution regarding hearing processes that had not yet been accommodated for conservancy district hearings. Most noteworthy was the development of the administrative orders and procedures act (IC 4-21.5) and the "sunset review" process for these agencies that resulted in 1990 and 1991 legislation.

The fourth development was the recodification of natural resources laws set forth in P.L. 1-1995. The recodification resolved a statutory ambiguity relative to adding territory to conservancy districts. Compare IC 13-3-3-6(a) as recodified at IC 14-33-4-2(b). In part to address the ambiguity, the commission implemented Information Bulletin #6, published at 17 IR 1836 (April 1, 1994). With the recodification, Information Bulletin #6 was reconsidered and amended.

In response to these developments, Information Bulletin #12 provided guidelines for implementation of conservancy districts processes, where those processes were within the jurisdiction of the natural resources commission. A flexible guidance was designed to help the commission fully and fairly review pertinent issues. Responsibilities were identified and delegated to the commission's division of hearings, and to the department of natural resources, so as to foster better coordination among these and other pertinent agencies.

The primary purposes of Information Bulletin #36 are as follows: (1) refinement of the purposes previously addressed in Information Bulletin #12; (2) integration of the "contiguity" analysis contained in Information Bulletin #6; (3) clarification of agency treatment of initiatives to add a purpose to an existing district; (4) inclusion of standards for determining whether a district qualifies for the purpose of flood prevention and control; and, (5) consideration of conservancy district elections.

The six crucial stages in which the commission serves are considered separately. These stages are as follows:

- (1) consideration of technical issues prior to formation of a district;
- (2) development of a district plan;
- (3) development of a unit of work;
- (4) addition of territory to an existing district;
- (5) addition of a purpose to an existing district; and,
- (6) dissolution of a district.

The natural resources commission on September 16, 2003 approved amendments to this information bulletin, for additions to conservancy districts in Hendricks County. These amendments were published in the Indiana Register and became effective on November 1, 2003. In 2004, the Indiana general assembly amended IC 14-33-4-2 by deleting the extraordinary requirements for Hendricks County. The legislation became effective July 1, 2004, and the information bulletin has been amended, consistently with the legislation, to remove these 2003 amendments.

2. Consideration of Technical Issues Prior to Formation of a District

A. Petition Referral

As provided in IC 14-33-2-17(b), after a court determines a petition to create a district is in proper form and bears the needed signatures, the petition is referred to the natural resources commission for a technical review. The issues for review are set forth in subsection (c) and include whether:

- (1) the proposed district appears to be necessary;
- (2) the proposed district holds promise of economic and engineering feasibility;
- (3) the proposed district seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
- (4) the proposed district proposes to cover and serve a proper area; and,
- (5) the proposed district could be established in a manner compatible with similar governmental entities.

At least one public hearing is mandatory. An interested person has "the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district." IC 14-33-2-19(a). Notice of the hearing must be published in a "newspaper of general circulation in each county containing land in the proposed district." IC 14-33-2-19(b). The commission is also required to incorporate technical assistance from any state and local agency that might have jurisdiction over the subject-matter of the proposed district.

The information received at public hearing and from the agencies is incorporated in a factfinding report to the commission from its hearing officer. The factfinding report of the commission on the proposed district is prima facie evidence of the facts in all subsequent proceedings. IC 14-33-2-23. After receipt of the report from the commission, the court sets another hearing at which an opportunity for additional evidence is provided. IC 14-33-2-25.

Of the six stages under consideration, the initial stage has traditionally been the one most likely to evoke controversy. The petitioner is always represented by an attorney. Where there is a formal remonstrance to a proposed district, the remonstrants are likely to have legal representation. Attorneys participating in the process at this stage, most notably those representing remonstrants, have sometimes urged the full application of the administrative orders and procedures act. Key elements of that act are that all testimony must be given under oath, there is an opportunity for the cross-examination of witnesses, and there is a prohibition on substantive ex parte communications between a party and the administrative law judge (or, if applied to conservancy districts, the hearing officer).

The administrative orders and procedures act does not appear to have direct application to the commission's role prior to formation of a district. Most notably, the act applies generally to agency "orders". The commission issues not an order but a factfinding report that the circuit court then utilizes as prima facie evidence. The court itself issues the order whether or not to create a conservancy district and does so only following a judicial hearing held after receipt of the commission's factfinding report. In addition, the application of the relatively formal processes of the administrative orders and procedures act appear unwieldy in relation to the informal public hearings before the commission's hearing officer; often these public hearings are attended by hundreds of participating citizens. Application of the administrative orders and procedures act may have a chilling effect upon public comment and inquiry at this preliminary stage. Finally, before the hearing date the hearing officer typically is only vaguely informed, if informed at all, of the identity of any remonstrants. The concept of party status is not generally well-defined at this stage, casting uncertainty on application of the prohibition against substantive ex parte communications.

On the other hand, fairness requires the full participation by remonstrants and by citizens seeking additional information, as well as by the petitioners, in this stage of the process. The development of a complete factfinding report is also supported by full participation by all citizens, particularly the freeholders to a proposed district. The process should be conducted in a manner which both is and has the appearance of being impartial. To these ends, the following guidelines are established:

- (1) Referrals by a court for the technical review anticipated by IC 14-33-2-17(b) are directed to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center South
402 West Washington Street, Room W272
Indianapolis, IN 46204-2739

- (2) As soon as practicable after the receipt of the referral, the director of the division of hearings appoints a hearing officer. The hearing officer conducts actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(A) The hearing officer promptly provides a copy of the referral to the division of water of the department of natural resources, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject-matter of the referral. Accompanied by the referral is an invitation for comment as well as the address and telephone number of a contact person within the division of water. The address for the contact person is as follows:

Division of Water-Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

(B) The hearing officer confers with the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrant or other party has entered an appearance as a party to the civil proceeding.

(C) The hearing officer forwards a copy of this nonrule policy document to each of the parties. Also included are the name, address, and telephone number of the contact person within the division of water who will coordinate technical reviews.

(D) If parties other than the petitioners have entered an appearance, the hearing officer promptly sets an informal conference of the parties. An invitation to participate is also made to division of water. During the informal conference, the hearing officer will attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

1. A hearing is held in the county seat of a county containing land in the proposed district.
2. The process is conducted in the most informal manner practicable that also supports fairness and meaningful public participation.
3. If issues in dispute are identified during the informal conference which require expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded by a court stenographer or reporter approved by the commission, and the trial rules of discovery applied. The hearing officer provides written notice

to the parties of any second hearing and also announces the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer makes every reasonable effort to conduct the second hearing so that a delay is not required in the submission of a recommended factfinding report to the commission.

(E) The hearing officer drafts and tenders to the commission a recommended factfinding report. A copy of the report is forwarded to each party, to the division of water, to any agency that commented upon the proposed conservancy district, and to any other person requesting a copy. The hearing officer encloses with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.

(F) Following action by the commission, the hearing officer causes a copy of the factfinding report of the commission to be filed with the court and served upon the division of water, the parties, and any other person requesting a copy.

B. ‘Contiguousness’ of District Boundaries

As part of the factfinding report, the commission is required to determine and communicate to the court whether a proposed district would “cover and serve a proper area.” IC 14-33-2-17(c)(5). Also, as provided in IC 14-33-2-22, the factfinding report must include “findings on the territorial limits of the proposed district.”

Factors for determining appropriate district boundaries are set forth in IC 14-33-3-1. Among these factors is a requirement that “each part of the district is contiguous to another part.” The statutory requirement of contiguousness forms an important element to the geographic requirements of the conservancy district chapter.

If lengthy but narrow boundaries are created to incorporate outlying areas into a district, problems could be posed to adjacent areas, particularly if residents of these areas are not allowed to enter the district. The establishment of a district with exclusive boundaries may hinder attempts by the residents to form a new district. These problems may be acute where a purpose of the district is to provide water supply or sewage disposal.

To establish a consistent and viable framework for determining what is “contiguous” within IC 14-33-3-1, the commission will apply the following:

As used in IC 14-33-3-1, “contiguous” will ordinarily be applied to require that each part of the district adjoin every other part. The requirement is not met where a district boundary is excessively long and narrow. What is excessively long and narrow will be evaluated on an individual basis and will more likely be a major concern for districts that would provide sewage disposal or water supply than for districts which would provide other services. Where the district would provide flood prevention and control, contiguousness will be applied to encourage a coordinated effort within a particular watershed.

An easement or other written license granted by the fee title holder to the district or proposed district may establish contiguousness. Where the district is to provide sewage treatment or water supply, freeholders must typically be provided an opportunity to connect to an adjacent line or to enter the district. As used in this paragraph, an “adjacent line” is one that is either (1) used to carry sewage and located within 300 feet of the freeholder’s building; or (2) used to carry water supply and located on an easement or license that adjoins the freeholder’s property. A petitioner must provide the division of water a copy of an easement or other written license that is used to establish contiguousness.

C. Review Standards for Purpose of Flood Prevention and Control

One purpose for which a conservancy district can be established is flood prevention and control. IC 14-33-1-1(a)(1). In order to receive a favorable determination by the commission under IC 14-33-2-17 for the purpose of flood prevention and control, the petitioners must show the district would accomplish at least one of the following functions:

- (1) The removal of obstructions and accumulated debris from a waterway channel.
- (2) The cleaning or straightening of a channel.
- (3) The development of a new and enlarged channel.
- (4) The construction or repair of dikes, levees, or other flood protective works.
- (5) The construction of waterway bank protection.
- (6) The establishment of a floodway.

All works for the purpose of flood prevention and control must be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable that complies with IC 14-28-1-29.

3. Development of a District Plan

Following the creation of a conservancy district by the circuit court, the district is required to establish a “district plan.” As provided in IC 14-33-6-2, a “district plan consists of an engineering report that sets forth the general, comprehensive plan for the accomplishment of each purpose for which the district was established.” The district plan includes physical and technical descriptions, maps, preliminary drawings, cost estimates based upon preliminary engineering surveys and studies, copies of agreements with other governmental entities, and works of improvement.

The board of directors is required to submit a district plan to the commission for its approval within 120 days after the appointment of the board members, unless a time extension is obtained from the commission. IC 14-13-6-3. “The commission may reject a plan or any part of a plan.” IC 14-13-6-4(d). “After receiving the approval of the commission, the board shall file the district

plan with the court.” IC 14-13-6-5(a). Following the filing by the board of directors, the court sets the district plan for a hearing. IC 14-13-6-5(b).

The conservancy district statutory article does not address review of the “approval” process at the state agency level, but administrative reviews are addressed generally in IC 4-21.5 (“administrative orders and procedures act” or “AOPA”). Licenses are governed by AOPA, and included within the definition of “license” is any “approval” required by law. IC 4-21.5-1-8. The term “license” is also defined in the statutory chapter governing the relationship of the natural resources commission and the department of natural resources to include an “approval” that may be issued by the department under Indiana law. IC 14-11-3-1(a).

Significant to the inclusion of “approval” within the definition of license contained in IC 14-11-3-1(a) is that “[n]otwithstanding any other law, the director shall issue all licenses.” IC 14-11-3-1(b). A designee may act for the director in license issuance, but the designee must be a “full-time employee of the department” of natural resources. IC 14-11-3-1(c). The commission then acts as the “ultimate authority” for license determinations by the director or his designee. IC 14-10-2-3. “Ultimate authority” is defined in AOPA to mean the entity “in whom the final authority for an agency is vested by law.” IC 4-21.5-1-15.

With this background, the following guidelines are established:

- (1) The board of directors of a district submits any proposal for or pertaining to a district plan to the department’s division of water.
- (2) The division of water assists the board in identifying licenses likely to be required to implement the district plan. The division of water also coordinates with the department of environmental management and the state department of health concerning any comments pertaining to the development of a district plan.
- (3) The division of water reviews and evaluates comments and alternative proposals to the district plan that may be submitted by other interested persons. The division of water shall consider only technical, engineering, and scientific issues necessary to the development of the district plan. The division may use facilitation or mediation to help resolve any conflict.
- (4) The director of the division of water approves or disapproves the district plan. Notice of the agency action and the opportunity to seek administrative review under AOPA is provided to the board of directors and to any other person requesting a copy of the notice. The director of the division of water also acts upon any request to extend the time to file a district plan, and the same notification process applies. The division director shall encourage the board to file completed applications for any necessary license as soon as practicable after approval of a district plan.
- (5) The commission’s division of hearings conducts any administrative review sought under part (4). The commission is the ultimate authority for the department of natural resources under AOPA. Following the completion of administrative review, the division of hearings notifies the parties of the completion and that review of the commission order is subject to further action by the circuit court pursuant to IC 14-13-6-5(b).

4. Development of a Unit of Work

To implement a district plan, the board of directors of a conservancy district “shall order the preparation of the detailed construction drawings, specifications, and refined cost estimates.... The implementation may involve all or part of the works of improvement if the part constitutes a unit that:

- (1) can be constructed and operated as a feasible unit alone; and
- (2) can be operated economically in conjunction with other proposed works set forth in the district plan.” IC 14-33-6-8(a). “When the drawings, specifications, and cost estimates have been prepared to the satisfaction of the board [of directors], the board shall by resolution tentatively adopt and submit the drawings, specifications, and cost estimates to the commission for approval.” IC 14-33-6-8(b). “Upon the receipt of the written approval,” the board provides a “hearing on the drawings, specifications, and cost estimates at which any interested person must be heard.” IC 14-33-6-9.

The process of the development of a unit of work is similar to that for the preparation of a district plan. An important distinction is no judicial hearing follows the commission approval. Within the context of the review process, the legislature may have envisioned the hearing by the board, following commission approval of the unit of work, serves as an informational rather than judicial or quasi-judicial process.

With this background, the following guidelines are established:

- (1) The board of directors of a district submits to the division of water of the department of natural resources any proposals for or pertaining to a unit work.
- (2) The division of water assists the board in identifying licenses likely to be required to implement the district plan. The division of water also coordinates with the department of environmental management and the state department of health concerning any comments pertaining to the development of a unit of work.
- (3) The division of water reviews and gives due consideration to comments and alternative proposals to the unit of work which may be submitted by other interested persons. In performing this function, the division is limited to consideration of the design and construction of structures needed to implement the district plan. The division may use facilitation or mediation to help resolve any conflict.
- (4) The director of the division of water approves or disapproves the unit of work. Notice of the agency action and the

opportunity to seek administrative review pursuant to the administrative orders and procedures act is provided to the board of directors and to any other person requesting a copy of the notice. The director of the division of water also acts upon any request to extend the time by which to file a unit of work, and the same notification process applies. The division director shall encourage the board of a conservancy district to file completed applications for any necessary license as soon as practicable after approval of a unit of work.

(5) The commission's division of hearings conducts any administrative review sought under part (4). The commission is the ultimate authority for the department of natural resources. Following the completion of administrative review under AOPA, the division of hearings notifies the parties of the final agency action by the commission and outlines the process for obtaining judicial review. Also included in the notice is reference to the informal hearing before the board of directors pursuant to IC 14-33-6-9.

5. Addition of Territory to an Existing District

Ordinarily, territory may be added to an existing district according to either of two procedures. The procedures in these two circumstances follow distinct paths and are here viewed separately:

A. Additions Initiated with the Circuit Court

Pursuant to IC 14-33-4-2(b)(1), territory may be added according to the same procedure as is provided for the establishment of a district. A petition to add territory under this subdivision will be supported by the following guidance.

After a court determines a petition to add territory to a district is in proper form and bears the needed signatures, the petition is referred to the natural resources commission for a technical review. The issues for review include whether:

1. the proposed addition appears to be necessary;
2. the proposed addition holds promise of economic and engineering feasibility;
3. the proposed addition seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
4. the proposed addition proposes to cover and serve a proper area; and,
5. the proposed addition could be implemented in a manner compatible with similar governmental entities, most notably the existing conservancy district.

At least one public hearing is mandatory. The hearing officer will be selected and conduct the hearing essentially as provided to consider the establishment of a new district. An interested person has the right to be heard. The hearing will be held at the county seat of a county containing land in the proposed district. Notice of the hearing will be published in a newspaper of general circulation in each county containing land in the district and the proposed addition. The commission hearing officer will incorporate technical assistance from a state agency having jurisdiction over the subject matter of the district and the proposed addition.

Where territory is sought to be added to an existing district, the impact upon the district is often inconsequential. An addition may be relatively minor and involve only a small area with little or no measurable affect to the freeholders within the existing district. The hearing officer will consider and, following the completion of the public hearing or hearings, report to the director of the division of water as to the likely consequence to the district of the proposed addition. The director of the division of water is delegated authority to determine when the proposed addition of territory is de minimis and when its review by the commission is unlikely to be productive. When the division director makes such a determination, the hearing officer's report is forwarded directly to the court as the commission's factfinding report. This report is to be submitted within 30 days of receipt by the division of water of a completed petition to add territory to a district.

B. Additions Initiated with the Board of Directors

As provided in IC 14-33-4-2(b)(2), an addition of territory to an existing district may also be initiated by a board resolution. The resolution follows a petition by the majority of freeholders or the municipality in the area proposed to be added. The resolution and petition are filed with the court, and the court sets the matter for hearing. Notice of the hearing is sent to the natural resources commission and to the freeholders in the district and in the area proposed to be served by the additional territory. The notice to the commission should be forwarded to the division of hearings.

Upon receipt of the notice, the division of hearings will notify the division of water of the department of natural resources and other state agencies which appear to have jurisdiction over the subject of the addition. A conservancy district board wishing to apply IC 14-33-4-2(b)(2) is urged to communicate its wish to the division of hearings as soon as practicable so that expeditious technical discussions may be pursued with the appropriate state agencies. The recommendation is that this communication occurs at least 60 days prior to the setting of a hearing under IC 14-33-4-2(d). Adequate review is essential to a favorable comment by the commission to the court. The division director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or condition the addition of territory, or to object to the addition of territory. See particularly IC 14-33-4-2(e).

6. Addition of a Purpose to an Existing District

A purpose may be added to an existing district in either of two ways. The same procedure may be used as is provided for the establishment of a district. IC 14-33-1-4(1). If this subdivision is applied, reference should be made to the process for the addition

of territory pursuant to part 5A of this nonrule policy document.

In the alternative, IC 14-33-1-4(2) provides that the conservancy district board may add a purpose based upon a petition signed by at least 10% of the freeholders of the district. If the resolution is passed, the resolution and petition are filed with the county court and the court sets the matter for hearing. The court forwards to the commission the notice of hearing along with a copy of the resolution "at least 30 days before the date of hearing." IC 14-33-1-5.

Upon receipt of the notice, the division of hearings will notify the department's division of water and other state agencies that appear to have jurisdiction over the subject of the addition. A conservancy district board wishing to apply IC 14-33-1-4(2) is urged to communicate its wish to the division of hearings as soon as practicable so that expeditious technical discussions may be pursued with the appropriate state agencies. The recommendation is this communication occur at least 60 days before setting a hearing under IC 14-33-1-5(b). Adequate review is essential to a favorable comment by the commission to the court. The division director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or condition the addition of purpose, or to object to the addition of purpose. See particularly IC 14-33-1-5(e).

7. Dissolution of a District

A conservancy district may be dissolved either because the district is "no longer of benefit" (IC 14-33-15) or because "construction of works of improvement has not begun within six (6) years after the district plan." (IC 14-33-16). Where works of improvement are not begun, there is no statutory participation by the natural resources commission; no procedural issue is presented. A district dissolved due to loss of benefit applies "the same procedure used to establish a district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit." IC 14-33-15-1.

Because the process is essentially the same for the dissolution as for the establishment of a conservancy district, the same analysis applies to the development of an appropriate process. With this background, the following guidelines are established:

- (1) Referrals by a court for the technical review anticipated by IC 14-33-15-1 are directed to the division of hearings.
- (2) As soon as practicable after the receipt of the referral, the director of the division of hearings appoints a hearing officer. The hearing officer conducts actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(A) The hearing officer promptly provides a copy of the referral to the division of water of the department of natural resources, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject-matter of the referral. Accompanied by the referral is an invitation for comment as well as the address and telephone number of a contact person within the division of water.

(B) The hearing officer confers with the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrant or other party has entered an appearance as a party to the civil proceeding.

(C) The hearing officer forwards a copy of this nonrule policy document to each of the parties. Also included are the name, address, and telephone number of the contact person within the division of water.

(D) If parties other than the petitioners have entered an appearance, the hearing officer promptly sets an informal conference of the parties. An invitation to participate is also made to division of water.

During the informal conference, the hearing officer will attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

- (1) A hearing is held the county seat of a county containing land in the district.
- (2) The process is conducted in the most informal manner practicable which also support fairness and meaningful public participation.
- (3) If issues in dispute are identified requiring expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded by a court stenographer or reporter approved by the commission, and the trial rules of discovery applied. The hearing officer announces the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer makes every reasonable effort to conduct the second hearing so that a delay is not required in the submission of a recommended factfinding report to the commission.
- (4) The hearing officer determines whether either of the following matters are in issue: (a) whether the board has failed, within two years of establishment of the conservancy district, to produce satisfactory evidence of progress in the preparation of the district plan; or, (b) whether federal or state money, or both, contemplated in the petition for the establishment of the district, appears to be unavailable. See IC 14-33-15-2.
- (E) The hearing officer drafts and tenders to the commission a recommended factfinding report. A copy of the report is forwarded to each party, to the division of water, to any agency that commented upon the conservancy district, and to any other person requesting a copy. The hearing officer encloses with the report a notice of the time, date, and location when

the commission is scheduled to act upon the recommended factfinding report.

(F) Following action by the commission, the hearing officer causes a copy of the factfinding report of the commission to be served upon the division of water, the parties, and any other person requesting a copy.

8. Election of Board of Directors and Notice to Commission

Neither the natural resources commission nor the department of natural resources have jurisdiction over board elections. The board of commissioners of the county appoints the board of directors for the new district within twenty (20) days after a court order establishing a district. IC 14-33-5-1. A person adversely affected by an action committed or omitted by the board may petition the court having jurisdiction over the district to enjoin or mandate the board. IC. 14-33-5-24.

The board chair is required by IC 14-33-5-17 to promptly notify the commission when board members are elected or appointed. The department's division of water maintains a database of conservancy districts and board members. By this Information Bulletin, the commission identifies the following address for the notice required by IC 14-33-5-17:

Division of Water–Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

Service at this address will also help assure the division of water's database is current. For more information see http://www.in.gov/dnr/water/publications/pdf/con_dist_dir.pdf.

9. Application and Modification

This information bulletin is intended to be liberally construed in order to support efficient administration by the natural resources commission, acting in cooperation with other agencies, of its conservancy district responsibilities. Modifications to the document may be needed based upon experience or legislative changes. Suggestions for modification of the document are welcomed from the public and should be forwarded to the division of hearings at the address set forth previously. Send any suggestions to the address for the division of hearings shown above or by email to slucas@nrc.IN.us.
